

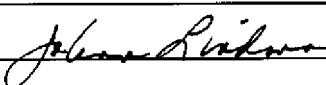
PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

H27197-1271.1101101

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on February 3, 2011

Signature 

Typed or printed name JoAnn Lindman

Application Number

10/597,927

Filed

July 3, 2007

First Named Inventor

Roelof Thiewes

Art Unit

3749

Examiner

Carl D. Price

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

Please consider this a PETITION FOR EXTENSION OF TIME for a sufficient number of months to enter these papers, if appropriate. Please charge any additional fees or credit overpayment to Deposit Account No. 50-0413.

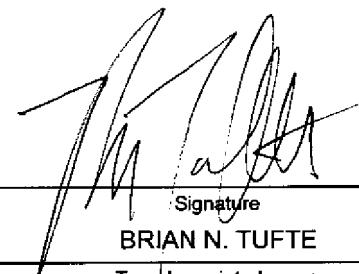
I am the

applicant/inventor.

assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

attorney or agent of record.

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Registration number if acting under 37 CFR 1.34 _____

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.



*Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Applicants submit that the Examiner's rejections contain at least the following clear errors and/or omissions of one or more essential elements needed for a *prima facie* rejection.

Claims 14 and 34 were rejected as being indefinite for reciting "quickly removed." The Examiner asserts that the specification does not provide a standard for ascertaining the requisite degree and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Applicants respectfully traverse the rejection. Applicants submit the claims themselves provide guidance for the scope of the claimed "quickly removed" in that the first and second fasteners are described as "being hand releasable by a user such that the" gas regulating device (first fastener) or housing (second fastener) "can be quickly removed and separated from the" housing or blower, respectively. Further, the specification provides a description of the claimed first and second releasable fasteners. For example, the first fastener that fastens the gas regulating device to the housing may be as described at page 5, lines 1-19, and the second fastener that fastens the housing to a support plate of a blower may be as described at page 4, lines 1-22. Applicants submit that one of ordinary skill in the art, upon reading the specification and claims, would readily understand the scope of the claimed fasteners that allow one element to be "quickly removed" and separated from another element. Reconsideration and withdrawal of the rejection are respectfully withdrawn.

Claims 14, 26, and 34-36 were rejected under 35 U.S.C. 103(a) as being unpatentable over DE 197 33 768 in view of Luttikholt (NL 1000129) or Veronese et al. (WO 02/077526) and JP 61106957 and Official Notice. DE 197 33 768 is in German, and the English abstract provides few details of the construction of the device. A machine translation of the specification of DE 197 33 768 does not appear to describe the claimed elements, but did yield the following statement: "The figures of the design show the article according to invention partly strongly schematized and are not necessarily full-scale to be understood." (Column 2, lines 60-63, translated at <http://babelfish.yahoo.com>). Applicants submit that it is improper for the Examiner to infer any specific construction from the "strongly schematized" figures of the reference, if that is where the Examiner believes that feature is taught. Because DE 197 33 768 is not in the English language, Applicants respectfully requested that the Examiner obtain a

translation of those parts relied upon by the Examiner if the Examiner elected to maintain this rejection. None was provided.

The Examiner asserts that DE 19733768 teaches a monolithic or single piece housing 15, and teaches “a gas inlet (5) opening extending through a side wall of the housing. However, DE 19733768 does not appear to teach a monolithic housing that defines a gas inlet that is configured as a female receptacle for receiving a protruding outlet stub of a gas regulating device. The English abstract of DE 19733768 recites “inflow aperture is formed by an inflow tube extending into the venturi tube.” Thus, the abstract of DE 19733768 would appear to teach a separate gas inflow tube that extends through the housing wall into the venturi tube, as is shown in FIG. 2 (e.g. not a monolithic or single piece housing). In any event, the English abstract of DE 19733768 cannot be seen to teach a monolithic housing defining a gas inlet, and in particular a gas inlet configured as a female receptacle, particularly in combination with the other elements of claim 14. DE 19733768 thus cannot be seen as teaching a monolithic housing defining the particular structure recited in claim 14. For similar reasons, DE 19733768 cannot be seen to teach the elements of independent claims 26 and 34.

The Examiner asserts Luttikholt teaches a monolithic housing 27 with an outlet intended to be directly attached to a fan inlet opening 3. Applicants respectfully disagree. Luttikholt is also not in English, and the English abstract does not appear to teach anything regarding a monolithic or single piece venturi housing. At best, the English abstract can be said to teach jets 29 equispaced around the throat of a venturi tube 27, and that air is drawn through the tube and into a burner manifold by a fan. The English abstract does not provide an indication of the structure or relationship of the venturi tube, housing, burner, and fan. In particular, there is nothing in the English abstract of Luttikholt that can be seen as teaching “the outlet is intended to be directly attached to a fan inlet opening (3),” as asserted by the Examiner. The Examiner appears to be making an assumption of a structural relationship based solely on a very schematic drawing (e.g. Figure 1). Applicants submit that one of ordinary skill in the art cannot determine whether or not a direct attachment is intended based only on the schematic drawing, without any written description. Applicants requested a copy of a translation if the Examiner is actually relying on a full translation of the Luttikholt reference. None was

provided. Certainly, the brief English abstract cannot be seen to support the Examiner's assertions.

The Examiner asserts that Veronese teaches forming an air-gas mixing device as a monolithic or single piece housing 1 where the outlet is intended to be directly attached to a fan inlet opening 3 plate with a quick connect without the aide of tools. This is not understood. Veronese actually appears to teach away from a fastener that is hand releasable by a user, as claimed. Veronese specifically teaches "plug/socket coupling of the connection system according to the invention is therefore a snap coupling. More particularly, the snap-coupling is substantially irreversible, that is, once the collar is engaged, it can be removed only with the aid of a tool." (Emphasis added) (See, page 3, lines 24-27). As such, the snap-coupling of Veronese appears to be connectable by hand, but requires a tool for removal. Veronese thus appears to teach the opposite of a hand releasable fastener by teaching a substantially irreversible connection that requires a tool for release. Thus, Veronese would appear to actually teach away from the claimed structure.

The Examiner asserts that it would have been obvious to modify the gas inlet of DE 19733768 to include a female receptacle in view of the teachings of JP 61106957. Applicants respectfully disagree. DE 19733768 appears to teach a gas inflow tube extending into the venturi tube such that the inflow aperture is arranged eccentrically to the tube axis, with the inflow tube opening 12' coaxial with the venturi tube opening 18. See FIGS. 2-5. DE 19733768 appears to teach their device being specifically designed such that the airflow of the gas inlet tube is directed into the venturi tube in the same direction as the air inlet. This is indicated by the arrows 5, for the gas inlet, and 13 for the air inlet. In view of the apparent teaching of DE 19733768 of a specific coaxial structure for the gas and air inlets, the mere fact that JP 61106957 appears to show gas inflow jets 7 extending perpendicular to the airflow direction of the venturi tube cannot be seen to provide a rational reason for one of ordinary skill in the art to change the specifically taught coaxial orientation of gas and air flow of DE 19733768. The Examiner appears to be relying on the mere fact that JP 61106957 appear to show in a schematic diagram, a gas inlet entering a venture tube at an angle, as providing motivation for modifying the specifically taught structure of DE 19733768. Applicants

submit this is not a proper basis for obviousness. The Supreme Court in *KSR Int'l Co. v. Teleflex Inc.* quotes *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006):

“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”.

Emphasis added; see page 14 of the April 30, 2007 decision. The Court further stated:

a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.

See page 14 of the April 30, 2007 decision. The Examiner has not provided the necessary articulated reasoning with rational underpinning to support the conclusion of obviousness. Instead, DE 19733768 appears to teach away from the Examiner's asserted modified structure. Also, because JP 61106957 and Luttikholt are not in English, and the provided English translations are silent regarding any reasoning or advantages for their specific structure, the references cannot be seen to teach or provide the requisite motivation, suggestions or rational reasoning for why one of ordinary skill in the art would have been motivated to modify the specifically taught coaxial gas and air flow of DE 19733768. If the Examiner is relying on more than just the schematic drawings and English abstracts of JP 61106957 or Luttikholt for motivation for modifying DE 19733768, Applicants respectfully request the Examiner provide a proper English translation of the reference(s).

The Examiner asserts that it would have been obvious to one of ordinary skill in the art to modify DE 19733768 to have projections formed to engage a mounting plate of a fan so as to form a hand operated fastening device in view of Veronese. Applicants respectfully disagree. As discussed above, Veronese appear to teach a system having a snap coupling that is substantially irreversible that “can be removed only with the aid of a tool.” See page 3, lines 25-27. Veronese thus appears to specifically teach away from a connection that is “hand releasable by a user such that the gas regulating device can be quickly removed” as recited in claims 14 and 34. Combining the references as asserted by the Examiner does not appear to provide any teaching or suggestion of a structure as claimed. Further, in view of the teaching away by Veronese, there would appear to be no

rational reason for one of ordinary skill in the art to modify any of the references to achieve the claimed structure.

The Examiner asserts, on page 12, that the recitation “hand releasable by a user” is merely a statement of intended use which fails to further define the claimed invention over the releasable flange and bolt fastening device of JP 61106957. Applicants respectfully disagree. One of ordinary skill in the art would clearly understand that “hand releasable by a user” does in fact impart a structural limitation on the claimed device. For example, as discussed above, Veronese specifically teach a snap coupling that “can be removed only with the aid of a tool.” Applicants submit that one of ordinary skill in the art certainly understands that the structure of Veronese’s snap coupling requires a tool for removal, and thus cannot be seen to be “hand releasable.” JP 61106957 appears to teach a control unit U connected to a carburettor body 1 “and fixed by a screw or the like.” The reference further teaches assembling the device “by fixing a flange part 11b and a mounting part 8 of the body 1 through a screw.” The reference thus appears to teach screws for connecting the various components. Applicants submit that one of ordinary skill in the art would clearly understand that screws are inserted and removed using a screwdriver (i.e. a tool), and are not considered “hand releasable.” Based on the English abstract, it is unclear how the Examiner is interpreting JP 61106957 as teaching hand insertable and removable bolts. The abstract clearly recites screws, and screws appear to be shown in the figures.

The Examiner further attempts to take Official Notice that it is well known in the art of fluid flow conduit connectors or fastening devices to employ relatively “quick” operating or “quick-acting” means, known to include snap or spring clip features, in place of more conventional flange and bolt type fasteners in order to eliminate more time consuming steps requiring the use of tools during installation. This is not understood. The Examiner certainly cannot take official notice in an attempt to provide the required rational reason for one of ordinary skill in the art to modify DE 19733768 or the other references to achieve the claimed structure. Applicants submit that, in view of the screw and “irreversible” connections specifically taught by the cited prior art, there is no rational reason for one of ordinary skill in the art to modify DE 19733768 or the other references to achieve the claimed structure.